

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

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The Minutes

February 27, 2006

MISC. ORDER 2006-001

Associate Justice George W. Nicholson is appointed to serve as Acting Presiding Justice to discharge the duties described in the California Rules of Court, rules 75, 76, 77, and 78, during the absence of the Presiding Justice from the court on March 2, 2006, and March 3, 2006, or until his return. (See Cal, Const., art. VI, §3.) The senior member of a panel of the Court is designated the Acting Presiding Justice of that panel during the absence of the Presiding Justice.

Scotland, P.J.

At 9:34 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Scotland, Presiding Justice; Sims, Associate Justice; Davis, Associate Justice; and Facey, bailiff.

C047075 GILL PETROLIUM, INC. v. HAYER et al.

Cause called. Jay-Allen Eisen argued and D. Robert Morris appeared only for appellant. A. Charles Dell'Ario argued for respondents. Cause submitted.

At 10:02 a.m., the court recessed. At 10:05 a.m., the court reconvened with Scotland, Presiding Justice; Raye, Associate Justice; and Morrison, Associate Justice.

C047689 YOUNGMAN v. DEPARTMENT OF TRANSPORTATION

Cause called. Maxine F. Ferguson argued for appellant. William D. Briner argued for respondent. Cause submitted.

At 10:37 a.m., the court recessed. At 10:42 a.m., the court reconvened with Scotland, Presiding Justice; Butz, Associate Justice; and Cantil-Sakauye, Associate Justice.

C046796 CALLAHAN v. STATE OF CALIFORNIA

Cause called. Tony J. Tanke argued for appellant. Kevin Corrington argued for respondent. Cause submitted.

At 11:14 a.m., the court recessed. At 11:17 a.m., the court reconvened with Blease, Associate Justice; Davis, Associate Justice; and Butz, Associate Justice.

C049283 In re SAMANTHA W.; PLACER COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES v. TERI J.

Cause called. Teri James argued In Pro Per as appellant. James R. Yeo argued for respondents. Cause submitted.

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At 11:22 a.m., the court recessed. At 11:29 a.m., the court reconvened with Blease, Associate Justice; Nicholson, Associate Justice; and Cantil-Sakauye, Associate Justice.

**C049013 SULLY-MILLER CONTRACTING COMPANY v. CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD and
DEPARTMENT OF INDUSTRIAL RELATIONS, DIVISION OF OCCUPATIONAL
SAFETY AND HEALTH**

Cause called. Robert Peterson argued for appellant. Davis W. Pies, OSHA Legal Unit, argued for real party in interest - respondent OSHA. Michael D. Mason appeared for real party in interest - respondent Department of Industrial Relations. Douglas G. Nareau argued for defendant-respondent California Occupational Safety and Health. Cause submitted.

At 11:59 a.m., the court recessed. At 2:05 p.m., the court reconvened with Scotland, Presiding Justice; Nicholson, Associate Justice; and Hull, Associate Justice.

**C048710 YEE et al. and LaSURE et al. v. FIRE INSURANCE EXCHANGE and
MATHENY SEARS LINKERT & LONG et al.**

**C048587 YEE et al. v. FIRE INSURANCE EXCHANGE et al., and
LaSURE et al. v. FIRE INSURANCE EXCHANGE**

Cause called. James J. Banks argued for appellants. Robert M. Dato argued for respondents Fire Insurance Exchange et al. James B. Kropff argued for respondents LaSure et al. Cause submitted.

At 2:48 p.m., the court recessed. At 2:53 p.m., the court reconvened with Blease, Associate Justice; Nicholson, Associate Justice; and Cantil-Sakauye, Associate Justice.

C049519 FINLEY v. WORKERS' COMPENSATION APPEALS BOARD et al.

Cause called. Thomas L. Plumb argued for petitioner. Brent S. Lindgren argued for respondents. Cause submitted.

At 3:22 p.m., the court recessed. At 3:23 p.m., the court reconvened with Sims, Associate Justice; Hull, Associate Justice; and Robie, Associate Justice.

**C049150 TILBURY CONSTRUCTORS, INC. . STATE COMPENSATION INSURANCE
FUND**

Cause called. Debbie J. Vorous argued for appellant. Barbara Gallios argued for respondent. Cause submitted.

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At 3:49 p.m., the court recessed until 9:30 a.m., Tuesday, February 28, 2006.

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| C044562 | THE PEOPLE v. DAVIS et al.
The judgments are affirmed.
MORRISON, J.
We Concur: Scotland, P.J.
Nicholson, J. | (Not for Publication) |
| C047728 | THE PEOPLE v. MORALES et al.
The judgments are modified... As modified, the judgments are affirmed.
CANTIL-SAKAUYE, J.
We Concur: Scotland, P.J.
Morrison, J. | (Not for Publication) |
| C049117 | THE PEOPLE v. FROEMEL
The judgment is affirmed.
SIMS, J.
We Concur: Blease, Acting P.J.
Morrison, J. | (Not for Publication) |
| C049552 | THE PEOPLE v. BASPED
The judgment is affirmed.
BUTZ, J.
We Concur: Raye, Acting P.J.
Morrison, J. | (Not for Publication) |
| C049745 | THE PEOPLE v. STEWART
The judgment is affirmed.
SIMS, J.
We Concur: Blease, Acting P.J.
Hull, J. | (Not for Publication) |
| C049826 | THE PEOPLE v. TIDWELL
The judgment is affirmed.
SIMS, Acting P.J.
We Concur: Hull, J.
Robie, J. | (Not for Publication) |

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- C050419 THE PEOPLE v. MARLER (Not for Publication)**
The order granting probation is amended to delete Allstate and add Althea Lane as the recipient of the entire award of victim restitution. As amended, the order granting probation is affirmed.
SIMS, Acting P.J.
We Concur: Hull, J.
Robie, J.
- C050429 THE PEOPLE v. MORTENSON (Not for Publication)**
The judgment is affirmed.
SIMS, Acting P.J.
We Concur: Hull, J.
Robie, J.
- C048686 In re T.P.; THE PEOPLE v. T.P. (Certified for Partial Publication)**
The order of the juvenile court imposing a \$50 fee pursuant to Health and Safety Code section 11372.5 is reversed. The order of the juvenile court committing the minor to the Sacramento County Boys Ranch is affirmed.
MORRISON, J.
We Concur: Sims, Acting P.J.
Nicholson, J.

February 28, 2006

At 9:31 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Blease, Associate Justice; Davis, Associate Justice; Cantil-Sakauye, Associate Justice and Rios, bailiff.

- C049484 WEBER v. SHEWRY, as Director, etc.**
Cause called. Mark S. Hardiman argued and Jordan B. Keville appeared only for appellant. Theodore Garelis, Deputy Attorney General, argued and Julie Weng-Gutierrez appeared only for respondent. Cause submitted.

At 9:59 a.m., the court recessed. At 10:02 a.m., the court reconvened with Scotland, P.J.; Davis, Associate Justice; and Morrison, Associate Justice.

- C046575 NEVIS v. FILLMORE
HB ORCHARDS COMPANY v. FILLMORE et al.**
Cause called. George E. Murphy argued for appellants. Jay-Allen Eisen argued for respondent HB Orchards Company. Michael R. Barrette argued for respondent Nevis. Cause submitted.

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At 10:30 a.m., the court recessed. At 10:33 a.m., the court reconvened with Blease, Associate Justice; Sims, Associate Justice; and Robie, Associate Justice.

C047051 JENKINS v. MALMIN et al.

Cause called. Jeffrey D. Heiser argued for appellant. Michael D. Wood argued for respondent, PG&E. Richard Matranga argued for respondent Angels Camp. Michael Weisberg argued for respondents Malmin et al. Cause submitted.

At 11:00 a.m., the court recessed. At 11:03 a.m., the court reconvened with Nicholson, Associate Justice; Morrison, Associate Justice; and Robie, Associate Justice.

**C049928 CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS v.
SCHWARZENEGGER, as Governor etc., et al. and PUBLIC EMPLOYMENT
RELATIONS BOARD**

Cause called. Tammy Lynn Samsel argued for appellant PERB. Gerald Andrew James argued for Appellant California Association of Professional Scientists. Michelle M. Lopez, Deputy Attorney General, argued and Jennifer M. Garten, DPA, appeared only for respondents. Cause submitted.

At 11:56 a.m., the court recessed. At 2:00 p.m., the court reconvened with Blease, Associate Justice; Sims, Associate Justice; and Hull, Associate Justice.

**C049810 In re MYRON A.; SISKIYOU COUNTY HUMAN SERVICES DEPARTMENT v.
KARUK TRIBE**

Cause called. Paula L.. Baca, county counsel, argued for appellant. Stephanie Dolan argued for respondent and submitted additional citations. Cause submitted.

At 2:32 p.m., the court recessed. At 2:35 p.m., the court reconvened with Blease, Associate Justice; Sims, Associate Justice; and Robie, Associate Justice.

C050233 LIEBLEIN, INC., et al. v. SHEWRY, as Director etc.

Cause called. Patric Hooper argued for appellants. Paul Reynaga, Deputy Attorney General, argued for respondents. Cause submitted.

At 2:59 p.m., the court recessed. At 3:05 p.m., the court reconvened with Blease, Associate Justice; Raye, Associate Justice; and Morrison, Associate Justice.

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C045386 TOYS “R” US, INC., et al. v. FRANCHISE TAX BOARD

Cause called. Eric J. Coffill argued for appellant and submitted additional citations. Michael J. Cornez, Deputy Attorney General, argued for respondent and submitted additional citations. Cause submitted.

At 4:01 p.m., the court recessed until 9:30 a.m., Monday, March 20, 2006.

C046679 THE PEOPLE v. JENSEN (Not for Publication)

The judgment is affirmed.

NICHOLSON, J.

We Concur: Blease, Acting P.J.
Butz, J.

C047362 THE PEOPLE v. ALEXANDER (Not for Publication)

The judgment is affirmed.

SIMS, J.

We Concur: Blease, Acting P.J.
Morrison, J.

C047879 THE PEOPLE v. CARROTHERS and BROADWAY (Not for Publication)

The judgments are affirmed.

MORRISON, J.

We Concur: Nicholson, Acting P.J.
Robie, J.

C048533 THE PEOPLE v. PRATER (Not for Publication)

The judgment is affirmed.

MORRISON, J.

We Concur: Blease, Acting P.J.
Sims, J.

C048604 THE PEOPLE v. ROMERO (Not for Publication)

The judgment is affirmed.

RAYE, J.

We Concur: Sims, Acting P.J.
Cantil-Sakauye, J.

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- C048915 THE PEOPLE v. UHLER (Not for Publication)**
The true finding that the 1997 prior conviction constituted a strike is affirmed...
CANTIL-SAKAUYE, J.
I concur: Morrison, J.
I concur but write separately...
Scotland, P.J.
- C049015 THE PEOPLE v. HERNANDEZ (Not for Publication)**
The judgment is affirmed.
MORRISON, J.
We Concur: Scotland, P.J.
Davis, J.
- C049687 THE PEOPLE v. LE (CERTIFIED FOR PUBLICATION)**
The judgment is affirmed.
SIMS, Acting P.J.
We Concur: Robie, J.
Cantil-Sakauye, J.
- C049825 THE PEOPLE v. THOMAS (Not for Publication)**
The judgment is affirmed.
MORRISON, J.
We Concur: Nicholson, Acting P.J.
Butz, J.
- C049840 THE PEOPLE v. VANARKEL (Not for Publication)**
The judgment is affirmed.
MORRISON, J.
We Concur: Scotland, P.J.
Cantil-Sakauye, J.
- C049929 THE PEOPLE v. SAWYER (Not for Publication)**
The judgment is affirmed.
MORRISON, J.
We Concur: Nicholson, Acting P.J.
Robie, J.
- C050031 THE PEOPLE v. BAUER (Not for Publication)**
The judgment is affirmed.
BUTZ, J.
We Concur: Blease, Acting P.J.
Robie, J.

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- C050200 THE PEOPLE v. O'NEAL (Not for Publication)**
The judgment is affirmed.
MORRISON, J.
We Concur: Blease, Acting P.J.
 Sims, J.
- C050526 THE PEOPLE v. LEE (Not for Publication)**
The judgment is affirmed.
BUTZ, J.
We Concur: Blease, Acting P.J.
 Robie, J.
- C044682 PONCIANO, JR. et al. v. REPUBLIC INDEMNITY INSURANCE COMPANY OF CALIFORNIA (Not for Publication)**
The judgment is affirmed.
NICHOLSON, J.
We Concur: Scotland, P.J.
 Davis, J.
- C047182 WALLIS v. PHL ASSOCIATES, INC., et al. (Not for Publication)**
The order denying the disqualification motion is affirmed.
NICHOLSON, Acting P.J.
We Concur: Raye, J.
 Robie, J.
- C047255 STEPHENS v. VALLEY INDUSTRIES, LLC. (Not for Publication)**
The judgment is reversed. Stephens shall recover costs on appeal.
MORRISON, J.
We Concur: Scotland, P.J.
 Davis, J.
- C047962 PALMER v. BOLLING, WALTER & GAWTHROP (Not for Publication)**
The judgment is affirmed. Bolling is awarded its costs on appeal.
BLEASE, Acting P.J.
We Concur: Nicholson, J.
 Butz, J.

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- C048555 ROSALES v. SANTOS (Not for Publication)**
The appeal is dismissed.
MORRISON, J.
We Concur: Scotland, P.J.
Davis, J.
- C049104 ANDAL et al. v. CITY OF STOCKTON (CERTIFIED FOR PUBLICATION)**
The judgment is reversed. Plaintiffs are awarded their costs on appeal.
(CERTIFIED FOR PUBLICATION)
DAVIS, Acting P.J.
We Concur: Nicholson, J.
Morrison, J.
- C046893 In re S.W.; PLACER COUNTY DEPARTMENT OF HEALTH AND HUMAN
SERVICES v. TERI J. (Not for Publication)**
The jurisdictional finding that the minor comes within section 300,
subdivision (c) is stricken. In all other respects, the judgment of disposition is
affirmed.
DAVIS, J.
We Concur: Scotland, P.J.
Sims, J.
- C047690 In re ADAM E.; THE PEOPLE v. ADAM E. (Not for Publication)**
The judgment is affirmed.
MORRISON, J.
We Concur: Blease, Acting P.J.
Davis, J.
- C048967 In re D.B.; THE PEOPLE v. D.B. (Not for Publication)**
The orders of the juvenile court are affirmed.
DAVIS, J.
We Concur: Blease, Acting P.J.
Butz, J.
- C049625 In re AARON K.; THE PEOPLE v. AARON K. (Not for Publication)**
The judgment is affirmed.
DAVIS, J.
We Concur: Blease, Acting P.J.
Butz, J.

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**C046893 In re SAMANTHA W.; PLACER COUNTY DEPARTMENT OF HEALTH AND
HUMAN SERVICES v. TERI J.**

BY THE COURT:

On the court's own motion, the issuance of the remittitur is ordered stayed.

The opinion of this court filed December 29, 2005, is vacated, the appeal is reinstated, and the matter is resubmitted. The clerk of this court is directed forthwith to refile the opinion in this matter, Upon refilling the time for issuance of the remittitur shall commence running as set forth in rule 26(a) of the California Rules of Court.

SCOTLAND, P.J.

March 1, 2006

C050122 THE PEOPLE v. HEDRINGTON (Not for Publication)

The judgment is reversed.

RAYE, J.

We Concur: Sims, Acting P.J.
 Cantil-Sakauye, J.

C050403 THE PEOPLE v. ROGERS (Not for Publication)

The order that the current sentence is to be served consecutively to any parole revocation time is stricken. As modified, the judgment is affirmed. As the abstract judgment does not reflect the erroneous order that defendant's sentence is to run consecutively to another term of imprisonment, the abstract does not require amendment.

DAVIS, J.

We Concur: Scotland. P.J.
 Hull, J.

C049794 JACOB B. v. COUNTY OF SHASTA et al. (Certified for Partial Publication)

The judgment is reversed. The matter is remanded to the trial court with instructions to grant the motion for nonsuit in its entirety and enter judgment in favor of defendants. Defendants shall recover their costs on appeal. (Cal. Rules of Court, rule 27(a).) (Certified for Partial Publication)

BUTZ, J.

We Concur: Nicholson, Acting P.J.
 Morrison, J.

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March 1, 2006, continued

C049379 HOSKINS et al. v. HOGSTAD et al.

THE COURT:

It is ordered that the opinion filed herein on February 21, 2006, not be certified for publication and that the opinion be modified...

...There is no change in the judgment.

BY THE COURT:

NICHOLSON, Acting P.J.

MORRISON, J.

ROBIE, J.

March 2, 2006

C046563 THE PEOPLE v. TORRES (Not for Publication)

The judgment is modified... As modified, the judgment is affirmed... The court shall forward a certified copy of the corrected abstract to the Department of Corrections and Rehabilitation.

SCOTLAND, P.J.

We Concur: Davis, J.

Robie, J.

C048206 THE PEOPLE v. CARRASCO (Not for Publication)

If the trial court has not yet amended the abstract to correct the errors set forth above, it is directed to prepare an amended and corrected abstract of judgment... A certified copy of the abstract shall be forwarded to the Department of Corrections. The judgment is affirmed.

DAVIS, J.

We Concur: Scotland, P.J.

Robie, J.

C047446 McGARRY v. EAKER et al. (Not for Publication)

The judgment is affirmed. The parties shall bear their own costs of this appeal. (Cal. Rules of Court, rule 27(a)(4).)

MORRISON, J.

We Concur: Davis, Acting P.J.

Nicholson, J.

C047895 GOLDSMITH et al. v. VIERRA et al. (Not for Publication)

The judgment and the post judgment order awarding attorney fees are reversed and the matter remanded... The parties shall bear their own costs on appeal.

HULL, J.

We Concur: Blease, Acting P.J.

Cantil-Sakauye, J.

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March 2, 2006, continued

- C048065 BELL v. ENBERG (Not for Publication)**
The judgment is affirmed.
SCOTLAND, P.J.
We Concur: Raye, J.
Morrison, J.
- C048619 ANDERSON v. WALDORF et al. (Not for Publication)**
The judgment (order) denying attorney fees is affirmed. Defendants shall received their costs on appeal.
HULL, J.
We Concur: Scotland, P.J.
Nicholson, J.
- C048683 CROWE and COSMIC TECHNOLOGIES CORPORATION v. GOGINENI (Not for Publication)**
The motion for appellate findings of fact is denied. The order awarding sanctions is vacated. The judgment is affirmed. The parties will pay their own costs on appeal.
DAVIS, J.
We Concur: Sims, Acting P.J.
Hull, J.
- C044714 STATE WATER RESOURCES CONTROL BOARD CASES.**
BY THE COURT:
Appellants Stockton East Water District et al.'s petition for rehearing is denied.
SCOTLAND, P.J.
- C044714 STATE WATER RESOURCES CONTROL BOARD CASES.**
BY THE COURT:
Appellant Westlands Water District's petition for rehearing is denied.
SCOTLAND, P.J.
- C044714 STATE WATER RESOURCES CONTROL BOARD CASES.**
BY THE COURT:
Real Party in Interest Department of Water Resources' petition for rehearing is denied.
SCOTLAND, P.J.

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March 2, 2006, continued

- C044714 STATE WATER RESOURCES CONTROL BOARD CASES.**
BY THE COURT:
Cross-appellants Angela Anderson et al.'s petition for rehearing and request for oral argument are denied.
ROBIE, Acting P.J.
- C044714 CORRECTED ORDER
STATE WATER RESOURCES CONTROL BOARD CASES.**
BY THE COURT:
Cross-appellants Angela Anderson et al.'s petition for rehearing and request for oral argument are denied.
SCOTLAND, P.J.
- C044714 STATE WATER RESOURCES CONTROL BOARD CASES.**
BY THE COURT:
Cross-appellant State Water Resources Control Board's petition for rehearing and request for modification of the opinion are denied.
ROBIE, Acting P.J.
- C044714 CORRECTED ORDER
STATE WATER RESOURCES CONTROL BOARD CASES.**
BY THE COURT:
Cross-appellant State Water Resources Control Board's petition for rehearing and request for modification of the opinion are denied.
SCOTLAND, P.J.
- C044714 STATE WATER RESOURCES CONTROL BOARD CASES.**
BY THE COURT:
Appellants Central Delta Water Agency et al.'s petition for rehearing is denied.
SCOTLAND, P.J.
- C045754 WILD GOOSE STORAGE, INC. v. ROSEVILLE LAND DEVELOPMENT
ASSOCIATION**
BY THE COURT:
On the court's own motion, the remittitur is ordered recalled to correct the issue of costs on appeal. The Butte County Trial Court Clerk is directed to forthwith to return the original remittitur issued February 27, 2006.
NICHOLSON, Acting P.J.

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March 2, 2006, continued

**C047659 KEPHART et al. v. TOYOTA MOTOR NORTH AMERICAN, INC. et al. and
GENUITY, INC.**
BY THE COURT:
Appellant's petition for rehearing is denied.
SCOTLAND, P.J.

March 3, 2006

C049484 WEBER v. SHEWRY, AS DIRECTOR, ETC.
(Not for Publication)
The judgment denying appellant's petition for writ of administrative
mandamus is affirmed. Costs on appeal are awarded to respondent. (Cal. Rules
of Court, rule 27(a).)
CANTIL-SAKAUYE, J.
We Concur: Blease, Acting P.J.
 Davis, J.

C048686 In re T.P.; THE PEOPLE v. T.P. (Certified for Partial Publication)
THE COURT:
It is ordered that the opinion filed herein on February 27, 2006, be
modified...
... This modification does not change the judgment.
FOR THE COURT:
SIMS, Acting P.J.
NICHOLSON, J.
MORRISON, J.